



STATE OF DELAWARE

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MEMORANDUM

TO: The Chair and Commissioners

FROM: Lisa B. Driggins, Public Utilities Analyst

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DATE: April 27, 2016

SUBJECT: IN THE MATTER OF THE APPLICATION OF TIDEWATER UTILITIES, INC.
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO 26 DEL. C. §203C ("PUMP STATION #210") (SUBMITTED
FEBRUARY 5, 2016; FILED APRIL 26, 2016)
PSC DOCKET NO. 16-0165

On February 5, 2016, Tidewater Utilities, Inc. ("Tidewater" or the "Company") submitted an application ("Application") with the Delaware Public Service Commission (the "Commission") seeking a Certificate of Public Convenience and Necessity ("CPCN") to provide water service to one parcel of land in Sussex County, Delaware, known as Pump Station #210 (the "Proposed Service Area") pursuant to 26 *Del. C.* §203C(e)(1)b. This Application was based on a petition signed by a Sussex County engineer. Hence, the Application contained the follow documentation as required by 26 *Del. C.* §203C(e)(1)b.2 and the Commission's Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities as set forth in 26 *Del. Admin. C.* §2002 (the "Regulations"): (1) a copy of a petition signed by the only landowner of record included in the Proposed Service Area requesting to be included in the Proposed Service Area; (2) a copy of the United States Postal Service form verifying that the Company sent, via certified mail, a Commission approved notice to the only landowner of record of the parcel included in the Proposed Service Area; (3) a list of the County tax map parcel identification number of the property and identification of the landowner of record included in the Proposed Service Area; and (4) a copy of the associated tax map clearly marking the Proposed Service Area. Additionally, the Application contained Tidewater's statement that its expansion of service to the Proposed Service Area will comply with the water pressure requirements of 26 *Del. C.* §§403(a) and (b) and that Tidewater is not barred by any of the restrictions set forth in 26 *Del. C.* §403(c).

In addition to the required notification to all the landowner of record in the Proposed Service Area, Tidewater published a notice in The News Journal on February 9, 2016, and in the Delaware State News on February 9, 2016. The notice advised the landowner of the filing of the Application, that the Application could be reviewed at the Commission's office during normal business hours or on the Commission's website, that a hearing on this matter would not be held unless an appropriate request for a hearing was received, and that the property owner could object to or "opt-out" of the Proposed Service Area. To date, no comments regarding the Company or the Application have been received, and the

landowner of record included in the Proposed Service Area has not objected to the Application or elected to “opt-out” of the Proposed Service Area.

The Commission Staff (“Staff”) reviewed the Application and noted that the landowner of record is Sussex County. In addition, Staff noted that the Application was missing a required plan of service with a specific timeline for providing water services. Staff therefore notified Tidewater that a proper basis for the CPCN would be a certified resolution from the governing body of Sussex County (rather than a petition signed by a county engineer).

On April 18, 2016 and April 26, 2016, Tidewater submitted additional required information and thereby revised the Application and the plan of service. At that time, the submitted Application and this additional required information completed the filing (the “Filed Application”). The Company also requested a waiver of the timing requirements set forth in 26 *Del. Admin. C.* §§ 2002-9.1¹ and 11.1.² As a “good cause,” Tidewater stated that granting the waiver would be in the public interest because the timing requirements are administrative rather than statutorily required. Tidewater also stated it had already provided all of the necessary information about the parcel in the submitted application, that granting a waiver “should not be unduly disruptive for customers,” that a waiver provides for an administratively efficient use of resources, and that an extension of water services to the Proposed Service Area would not “harm or degrade Tidewater’s ability to provide safe, reliable water services for present customers.”

Staff notes this CPCN is for a pumping station currently in construction and that holding up the CPCN could cause delays in this construction. Staff believes that the reasons given by Tidewater as “good cause” justify granting the Company a time extension. The Company has already given the required notice of the Application to the only landowner of record and has published in two newspapers a notice that the Application was filed by Tidewater. Although the timing of these notices did not comply with the requirements in the Regulations, the timing requirements are not statutorily required. Staff also believes that granting the CPCN is justified based on the filed documentation. Therefore, Staff recommends that the Commission modify the timing requirements as allowed under 26 *Del. Admin. C.* §2002-1.4.³

Staff reviewed the Filed Application to ensure compliance with the statutory provisions of 26 *Del. C.* §203C and the Regulations. Except for the timing issues discussed above, which Staff recommends be modified, no other errors or omissions were found. Finally, to determine whether the Commission should deny the requested CPCN as set forth in 26 *Del. C.* §203C(f), Staff solicited comments from the Delaware Department of Natural Resources and Environmental Control, the Office of the State Fire Marshal, and the Office of Drinking Water of the Division of Public Health. All three agencies responded and confirmed they have no issues relating to Tidewater’s ability to provide safe, adequate, and reliable water services to its existing customers.

¹ Staff believes that this reference should have been to 26 *Del. Admin. C.* §2002-9.2 which requires the Company to send a notice of the filed application to the landowner of record not more than 35 days and not less than 30 days prior to the filing of the application.

² Staff also believes that this reference should have been to 26 *Del. Admin. C.* §2002-10.7 which requires that the Company publish notice of the application in two newspapers of general circulation within 10 days of filing the application.

³ 26 *Del. Admin. C.* §2002-1.4 provides that the Commission may modify or extend any of the timing requirements set forth in the Regulations so long as such timing requirement is not required by a statutory provision.

In summary, Staff recommends that the Commission grant Tidewater's requested waiver of the regulatory timing requirements. Staff also finds no reason to deny the Company a CPCN under the provisions of 26 *Del. C.* §203C(f). Therefore, Staff recommends that the Commission grant the Company a CPCN based on the Filed Application.